SS Saw v Siew Heen Yuen & Ors (Siew Boon Hong @ Shandran & Ors, interveners)

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-02–200 OF 2001
ZALEHA ZAHARI, ABDULL HAMID EMBONG AND SULONG MATJERAIE JJCA
8 OCTOBER 2008

Landlord and Tenant — Determination — Notice — Failure to vacate premises — Whether tenancy validly terminated by landlord — Whether premises were rent controlled premises — Whether occupants acquired tenancy coupled with equity or equitable estoppel — Whether landlord should pay compensation to occupants — Whether landlord induced or encouraged occupants to expend money on land

The subject matter of this suit was five lots of land ('the lands') acquired by the plaintiff's father on 20 April 1961. At the time of the purchase of the lands the 43 premises, which were erected on the land ('the premises') were already in existence. On 10 October 1966, the lands together with the premises were transferred into the name of the plaintiff. The 43 defendants, who occupied the premises, were monthly tenants who paid the plaintiff a ground rent of RM45.90 a month. The rates and assessments in respect of the premises to Dewan Bandaraya Kuala Lumpur ('DBKL') were borne by the defendants. The plaintiff issued 43 notices to quit dated 22 August 1974 to the original 43 defendants to deliver vacant possession of the lands on or before 30 September 1974. When the defendants failed to vacate and deliver vacant possession of the lands by the due date, the plaintiff commenced proceedings to apply for an order of vacant possession of the lands and for the defendants to pay double rent at the rate of RM91.80 per month until the date of vacant possession with costs. The defendants' defence was that the premises were controlled premises subject to the Control of Rent Act 1966 ('the Act'). Ten of the original 43 defendants however filed an amended statement of defence wherein they inserted the additional ground that they had acquired a tenancy coupled with an interest by reason of having purchased their respective premises and/or by reason of having paid the rates and assessments in respect of the premises. When the trial commenced on 4 May 2000, leave was granted to 23 interveners ('the interveners'), who claimed to be subsequent purchasers of 23 of the premises on the lands, to be made parties to the proceedings as defendants. The interveners' case rested on the testimony of three witnesses who alleged that they had acquired a

A tenancy coupled with an equity or an equitable estoppel on the basis that the plaintiff had by his conduct permitted them to pay the assessments and encouraged them to purchase their respective units. They therefore contended that since they were the holders of a valid municipal licence for possession to retain a temporary building from April 1974 to April 1975 the
B notice to quit issued by the plaintiff was invalid as against them. The High Court entered judgment in favour of the plaintiff and directed the defendants to deliver vacant possession of the lands but the order of vacant possession was conditional upon payment of compensation to the defendants and interveners. This was the plaintiff's appeal against that part of the order
C directing him to pay compensation, to be assessed, to the defendants and interveners. The plaintiff submitted that the factual position of each defendant and intervener was different and that since there was nothing to support the fact all their positions were equal, the trial judge had erred in finding that the defendants had acquired a tenancy coupled with equity based
D on the testimony of only two defendants. The plaintiff further asserted that the two defendants who had testified were no longer occupying the premises and therefore could not have acquired a tenancy coupled with equity. Moreover, other than the plaintiff collecting rent on a monthly basis prior to the issuance of the notice to quit there was no evidence to show that any of
E the defendants or interveners had been encouraged by the plaintiff to purchase or renovate their premises in the expectation that they would be allowed to remain there. As such, the plaintiff contended there was no tenancy coupled with equity but only a monthly tenancy terminable with one month's notice which tenancy had been validly terminated by the notices to
F quit and that the payment of assessment by the defendants was merely an incident of occupation imposed by and payable to the local authority and had no bearing on the tenancy.

G

Held, allowing the appeal with costs:

(1) The 33 defendants had in their pleadings maintained that they were protected by the Act because they were occupying rent controlled premises. Their defence made no mention of any of them having
H acquired a tenancy coupled with an interest or equity. It is trite law that parties are bound by their pleadings and that a judgment should be based on the issues pleaded. Therefore the trial judge was not entitled to decide the suit on an issue which had not been raised by these 33 defendants in their defence. Further, it was incumbent upon these 33
I defendants who alleged the protection of the Act to prove that the premises they were occupying were constructed on or before 31 January 1948. However, the records showed that the premises had been constructed in 1949 and thus the Act is accordingly not applicable to the premises occupied by the 33 defendants. As such, the trial judge

erred in ordering the plaintiff to pay compensation to these 33 defendants on the basis of having acquired an equitable interest (see paras 37, 51 & 54).

(2) As this was not a representative action the two defendants and three interveners who testified at trial did so on their own behalf and not on behalf of any other defendants or interveners (see paras 37 & 55).

(3) In the present case there was no evidence of the plaintiff having encouraged or induced the defendants or the interveners to expend money on the lands. Their dealings if any were all with the previous landowner and not with the plaintiff. In fact, two of the defendants had testified that they no longer lived in the premises but had in fact rented them out and were enjoying rental as contrasted with the position of the plaintiff who received no rental subsequent to the issuance of the notice to quit (see para 58).

(4) The defendants and interveners knew that the temporary building licences that were issued to them were only valid for a year and were revocable being subject to the plaintiff landowner's consent. As such when the plaintiff in the present case gave the required one month's notice that consent had been withdrawn and the defendants and interveners had to vacate the premises. In addition, the payment of the rates and assessments by the defendants and interveners was an incident of the occupation of the premises imposed by and payable to the local authority (see paras 26 & 59).

(5) The defendants and interveners had been occupying the premises since 1950 and the equity claimed by them had been satisfied by reason of this long occupation. The rents paid by the defendants were also a paltry sum. In the circumstances it would be unjust and inequitable for the defendants and interveners to be paid any compensation by the plaintiff (see para 61).

[Bahasa Malaysia summary

Perkara guaman ini adalah mengenai lima lot tanah ('tanah tersebut') yang diperolehi oleh bapa plaintif pada 20 April 1961. Pada masa pembelian tanah-tanah tersebut 43 premis, yang didirikan di atas tanah tersebut ('premis-premis') telah pun wujud. Pada 10 Oktober 1966, tanah-tanah tersebut bersama dengan premis-premis tersebut telah dipindahmilik kepada nama plaintif. 43 defendan, yang menduduki premis-premis tersebut adalah penyewa bulanan yang membayar kepada plaintif sewa dasar/pokok sebanyak RM45.90 sebulan. Kadar dan taksiran berkenaan premis-premis tersebut kepada Dewan Bandaraya Kuala Lumpur ('DBKL') ditanggung oleh defendan-defendan. Plaintif mengeluarkan 43 notis untuk keluar bertarikh

22 Ogos 1974 kepada 43 defendan asal untuk menyerahkan milikan kosong tanah-tanah tersebut pada atau sebelum 30 September 1974. Apabila defendan-defendan gagal untuk mengosongkan dan menyerahkan milikan kosong tanah-tanah tersebut pada tarikh akhir, plaintif memulakan prosiding untuk memohon bagi perintah milikan kosong tanah-tanah tersebut dan bagi defendan-defendan membayar sewa berganda pada kadar RM91.80 sebulan sehingga tarikh milikan kosong dengan kos. Pembelaan defendan-defendan adalah bahawa premis-premis tersebut adalah premis-premis terkawal tertakluk kepada Akta Kawalan Sewa 1966 ('Akta tersebut'). Sepuluh daripada 43 defendan-defendan asal walau bagaimanapun memfail satu pernyataan pembelaan pembetulan di mana mereka memasukkan alasan tambahan bahawa mereka telah memperolehi satu penyewaan berserta dengan kepentingan dengan alasan membeli premis-premis masing-masing dan/atau dengan alasan telah membayar kadar dan taksiran berkenaan premis-premis tersebut. Apabila perbicaraan bermula pada 4 Mei 2000, kebenaran diberikan kepada 23 pencelah ('pencelah-pencelah') yang mendakwa menjadi pembeli seterusnya kepada 23 premis-premis di atas tanah-tanah tersebut, untuk dijadikan pihak-pihak kepada prosiding tersebut sebagai defendan. Kes pencelah-pencelah diletakkan di atas keterangan tiga saksi yang mendakwa bahawa mereka memperolehi penyewaan berserta dengan ekuiti dan atau satu ekuiti estoppel berdasarkan bahawa plaintif telah melalui tindakannya membenarkan mereka membayar taksiran tersebut dan menggalakkan mereka untuk membeli unit mereka masing-masing. Mereka oleh itu berhujah bahawa memandangkan mereka adalah pemegang lesen perbandaran yang sah bagi pemilikan untuk mengekalkan satu bangunan sementara dari April 1974 hingga April 1975 notis untuk keluar yang dikeluarkan oleh plaintif tidak sah terhadap mereka. Mahkamah Tinggi membuat penghakiman berpihak kepada plaintif dan mengarahkan defendan-defendan menyerahkan milikan kosong tanah-tanah tersebut tetapi perintah milikan kosong adalah dengan syarat pembayaran ganti rugi dibayar kepada defendan-defendan dan pencelah-pencelah. Ini adalah rayuan plaintif terhadap bahagian perintah yang mengarahkan plaintif membayar ganti rugi, untuk ditaksir, kepada defendan-defendan dan pencelah-pencelah. Plaintif menghujahkan bahawa kedudukan fakta setiap defendan dan pencelah adalah berbeza dan memandangkan tidak terdapat apa-apa untuk menyokong fakta bahawa semua kedudukan mereka adalah sama, hakim bicara telah terkhilaf dalam dapatan bahawa defendan-defendan memperolehi penyewaan berserta dengan ekuiti berdasarkan keterangan oleh hanya dua defendan. Plaintif seterusnya menegaskan bahawa kedua-dua defendan yang telah memberi keterangan tidak lagi menduduki premis-premis tersebut dan oleh itu tidak boleh memperolehi penyewaan berserta dengan ekuiti. Selanjutnya, selain daripada plaintif memungut sewa setiap bulan sebelum pengeluaran notis untuk keluar tidak terdapat keterangan untuk menunjukkan bahawa mana-mana defendan-defendan atau pencelah-pencelah telah digalakkan oleh plaintif untuk membeli atau mengubahsuai premis-premis mereka dengan

harapan bahawa mereka akan dibenarkan untuk menetap di situ. Oleh itu, plaintif berhujah bahawa tidak terdapat penyewaan berserta dengan ekuiti tetapi hanya sebulan penyewaan yang boleh terbatal dengan notis sebulan yang mana penyewaan telah dibatalkan secara sah oleh notis untuk keluar dan bahawa pembayaran taksiran oleh defendan-defendan hanyalah satu kejadian pendudukan yang dikenakan oleh dan dibayar kepada pihak berkuasa tempatan dan tidak memberi kesan kepada penyewaan.

Diputuskan, membenarkan rayuan dengan kos:

(1) 33 defendan-defendan dalam pliding mereka menegaskan bahawa mereka dilindungi oleh Akta tersebut kerana mereka menduduki premis-premis yang dikawal sewa. Pembelaan mereka tidak menyebut mana-mana di antara mereka memperolehi penyewaan berserta kepentingan atau faedah. Ia adalah undang-undang nyata bahawa pihak-pihak terikat dengan pliding-pliding mereka dan bahawa sesuatu penghakiman perlu didasarkan pada isu-isu yang diplid. Oleh itu hakim bicara tidak berhak untuk memutuskan guaman tersebut atas satu isu yang tidak dibangkitkan oleh 33 defendan ini dalam pembelaan mereka. Selanjutnya ia wajib ke atas 33 defendan ini yang mendakwa perlindungan oleh Akta tersebut untuk membuktikan bahawa premis-premis yang mereka duduki dibina pada atau sebelum 31 Januari 1948. Walau bagaimanapun, rekod-rekod menunjukkan bahawa premis-premis tersebut dibina pada tahun 1949 dan oleh itu Akta tersebut tidak digunapakai terhadap premis-premis yang diduduki oleh 33 defendan itu. Oleh yang demikian, hakim bicara telah terkhilaf dalam memerintahkan plaintif untuk membayar ganti rugi kepada 33 defendan itu atas alasan mereka memperolehi kepentingan ekuiti (lihat perenggan 37, 51 & 54).

(2) Memandangkan ini bukan satu tindakan perwakilan kedua-dua defendan dan ketiga-tiga pencelah yang memberi keterangan semasa perbicaraan berbuat demikian bagi mereka sendiri dan bukan bagi pihak defendan-defendan atau pencelah-pencelah yang lain (lihat perenggan 37 & 55).

(3) Dalam kes ini tidak terdapat keterangan mengenai plaintif menggalakkan atau menghasut defendan-defendan atau pencelah-pencelah untuk melaburkan wang ke atas tanah-tanah tersebut. Urusan mereka jika ada adalah kesemuanya dengan tuan tanah terdahulu dan bukan dengan plaintif. Malah, dua daripada defendan telah memberi keterangan bahawa mereka tidak lagi tinggal di premis-premis tersebut tetapi sebenarnya telah menyewakannya dan

menikmati wang sewaan yang bercanggah dengan kedudukan plaintif yang tidak menerima wang sewaan berikutan daripada notis untuk keluar (lihat perenggan 58).

(4) Defendan-defendan dan pencelah-pencelah mengetahui bahawa lesen bangunan sementara yang dikeluarkan kepada mereka hanya sah untuk setahun dan boleh ditarik balik tertakluk kepada persetujuan plaintif tuan tanah. Oleh itu, apabila plaintif dalam kes ini memberi notis sebulan seperti yang diperlukan persetujuan tersebut telah ditarik balik dan defendan-defendan dan pencelah-pencelah perlu mengosongkan premis-premis tersebut. Selanjutnya, pembayaran kadar dan taksiran oleh defendan-defendan dan pencelah-pencelah adalah kejadian pendudukan premis-premis tersebut yang dikenakan oleh dan dibayar kepada pihak berkuasa tempatan (lihat perenggan 26 & 59).

(5) Defendan-defendan dan pencelah-pencelah telah menduduki premis-premis tersebut semenjak tahun 1950 dan ekuiti yang dituntut oleh mereka telah dipenuhi oleh pendudukan yang lama ini. Wang sewa yang dibayar oleh defendan juga satu jumlah yang tidak seberapa. Dalam keadaan ini ia tidak adil dan tidak berekuiti bagi defendan-defendan dan pencelah-pencelah dibayar ganti rugi oleh plaintif (lihat perenggan 61).]

Notes

For cases on notice, see 9 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 917–983.

Cases referred to

Devi v Francis [1969] 2 MLJ 169; [1968] 1 LNS 34, HC (refd)
Ramsden v Dyson (1866) LR 1 HL 129, HL (refd)
Siew Soon Wah & Ors v Yong Tong Hong [1973] 1 MLJ 133, PC (refd)

Legislation referred to

Control of Rent Act 1966
National Land Code s 221(3)

Appeal from: Civil Suit No 145 of 1975 (High Court, Kuala Lumpur)

DP Naban (Joseph Yeo and Halina Jael Abu Bakar with him)(Joseph Yeo) for the appellant.
Dennis Xavier (Xavier Norhaslinda & Associates) for the second, sixth, 12th, 14th, 26th, 28th, 31st, 40th and 42nd respondents.
Prasad Abraham (Veronica Dominic with him) (Prasad Abraham & Associates) for the interveners/respondents.

Zaleha Zahari JCA (delivering judgment of the court):

[1] On 24 April 2008 we allowed the plaintiff's (appellant before us) appeal with costs. Our reasons are as follows.

[2] In this judgment parties will be cited as they appear in the court below.

[3] The High Court judge had at the end of trial on 16 February 2001 entered judgment in favour of the plaintiff and directed the defendants to deliver vacant possession of the lands in issue subject however to conditions. The order, inter alia, states:

> ADALAH DIPERINTAHKAN bahawa Plaintif hendaklah diberi milikan kosong tanah-tanah Geran No 36507, 36508, 36509, 36510 and 36511 untuk Lot 7, 8, 9, 10 dan 11 kesemuanya di Seksyen 86A, Bandar Kuala Lumpur (dahulunya C.T. No. 8551, 8552, 8553, 8554 and 8555) di atas syarat Plaintif membuat pampasan yang di persetujui atau ditaksir oleh Penolong Kanan Pendaftar DAN ADALAH SELANJUTNYA DIPERINTAHKAN bahawa Defendan-Defendan memberi milikan kosong tanah-tanah tersebut di dalam tempoh tiga (3) bulan dari tarikh penerimaan pampasan tersebut DAN ADALAH DIPERINTAHKAN bahawa pihak-pihak menaggung kos masing-masing.

[4] In a nutshell the complaint of the plaintiff in this appeal is against the order of vacant possession being conditional upon payment of compensation (to be assessed) to the original 43 defendants named in the original statement of claim, as well as to the 23 interveners/defendants who were made parties to the proceedings (after trial had commenced) pursuant to leave of court dated 4 May 2000 ie more than 25 years after he commenced proceedings against the original 43 defendants.

BACKGROUND

[5] The background facts are these. The subject matter of the suit are five lots of land held under Certificate Title No 8551, 8552, 8553, 8554 and 8555 for Lots Nos 7, 8, 9, 10 and 11 in Section 86A, Town of Kuala Lumpur now held under Grant No 36507, 36508, 36509, 36510 and 36511 ('the said lands') upon which 43 premises were erected ie Nos 72, 72A, 72B, 72C, 72D, 72E, 72F, 72G, 72H, 72I, 72J, 72K, 74, 74A, 74B, 74C, 74D, 74E, 74F, 74G, 74H, 74I and 74J Jalan Beserah and Nos 76, 76A, 76B, 76C, 76D, 76E, 78, 78A, 78B, 78C, 78D, 78E, 80, 80A, 80B, 80C, 80D, 80E, 80F and 80G, Jalan Tembeling ('the said premises').

[6] The title of the said lands (exh P14) shows that the said lands were transferred from Lim Yoke Ching (the previous land owner) to Saw Kim Thiat (the plaintiff's father (PW1)) on 20 April 1961. On 10 October 1966 the said lands were then transferred into the name of Saw Shiou Syong, the plaintiff in this case. It is not in issue that when PW1 purchased the said lands, the said premises were already in existence. It is common ground that the 43 defendants were monthly tenants and paid the plaintiff ground rent of RM45.90 a month. The rates and assessments in respect of respective premises to Dewan Bandaraya Kuala Lumpur ('DBKL') were borne by the respective tenants.

[7] The plaintiff had through his solicitors, Tetuan Dato' SM Yong & Co, issued 43 notices to quit all dated 22 August 1974 ('P6') to the original 43 defendants by which notice the defendants were required to deliver vacant possession of the said lands on 30 September 1974, or on the expiration of the next complete month of the tenancy subsequent to receipt of the notice to quit. The notice to quit specified that should the defendants fail to do so, a claim would be filed without any further notice.

[8] The original 43 defendants reply to the notice to quit vide their solicitor's (Syarikat Lek Yan) letter (exh P8), was they were unable to comply with the notice to quit as the said premises were controlled premises subject to the Control of Rent Act 1966.

THE CLAIM

[9] When the 43 defendants failed to vacate and deliver vacant possession of the said lands by the due date, the plaintiff commenced proceedings. By writ of summons dated 24 January 1975 filed by Tetuan Joseph Yeo, the plaintiff applied for an order of vacant possession of the said lands. According to the amended statement of claim dated 1 March 1975 the plaintiff prayed for the following orders: firstly, that the 43 defendants forthwith deliver vacant possession of the said lands; secondly, that each of the defendants do pay the plaintiff double rent at the rate of RM91.80 per month from the date his/her tenancy was determined to date of vacant possession, as well as costs.

THE DEFENCE

(a) *The original statement of the defence of the 43 defendants*

[10] On 15 March 1975 a statement of defence was filed by Syarikat Lek Yan on behalf of the original 43 defendants. The defence raised was a straight forward one, that the said premises were controlled premises subject to the Control of Rent Act 1966 and they claim protection under the said Act.

(b) *The amended defence of the second, sixth, 12th, 14th, 26th, 28th, 31st, 40th and 42nd defendants*

[11] Ten of the original 43 defendants (ie Lim Yew Lai (second defendant), Chin Ho (f) (sixth defendant), Ng Soh Wah (12th defendant), Tan Pek Im (14th defendant), SV Sarma (26th defendant), Fan Yoke Ying (f) (28th defendant), Chui Sew Mo (31st defendant), Yap Biow Hwee (38th defendant), Cheen Yit (f) (40th defendant), and Chua Yoke Hwe (42nd defendant)) were subsequently represented by Tetuan Xavier Norhaslinda & Associates.

[12] Messrs Xavier Norhaslinda & Associates filed an amended statement of defence on their behalf to that filed by Syarikat Lek Yan dated 5 May 2000 (ie 20 years 2 months after the filing of the original statement of defence). An additional ground was inserted into their defence. The ten defendants represented by Tetuan Xavier Norhaslinda & Associates claimed that they had all acquired a tenancy coupled with an interest by reason of having purchased their respective premises and/or by reason of having paid the assessments, rates and taxes in respect of the said premises. Further, by reason of the plaintiff having consented to the issuance of the yearly municipal licence for permission to them to retain a temporary building on the said lands.

[13] Pausing here for a moment, consequential upon this development, the 33 defendants not represented by Tetuan Xavier Norhaslinda & Associates, continued to be represented by Syarikat Lek Yan. We observe to note from the record of proceedings that at each and every hearing date the court enquired and placed on record that Tetuan Syarikat Lek Yan had been informed of the hearing date in question and that no one appeared on behalf of these 33 defendants notwithstanding the fact of having been notified of the same.

The interveners defence

[14] Leave to intervene was granted by the court to the 23 interveners on 4 May 2000 and were made parties to the proceedings as defendants. The interveners/defendants were represented by Tetuan Prasad Abraham & Associates.

[15] By the interveners' statement of defence dated 5 May 2000 (ie the same date of the amended defence of the ten defendants represented by Tetuan Xavier Norhaslinda & Associates) the interveners claimed to be subsequent purchasers of the following premises, ie No 72, 72B, 72C, 72D, 72E, 72F, 72G, 72H, 72I, 72J, 74, 74B, 74C, 74D, 74E, 74J, 76, 76A, 76C, 76E, 78B, 78C,78D, 78E, 80, 80A and 80E respectively.

[16] The interveners/defendants then alleged that they had acquired a tenancy coupled with an equity or an equitable estoppel on the basis that the plaintiff had by his conduct, expressly or by implication, permitted and/or acquiesced in them paying the assessments to the appropriate authorities, and is estopped from denying that they had acquired such an equity.

[17] The interveners/defendants also contended that the notice to quit issued by the plaintiff was invalid by reason of the interveners/defendants being the holder of a valid municipal licence for possession to retain a temporary building for the period 16 April 1974 to 15 April 1975. According to them the plaintiff had by his conduct consented to the issuance of the said licence. the interveners/defendants also contended that the plaintiff had encouraged the interveners/defendants to purchase their respective premises.

THE EVIDENCE

The plaintiff's case

[18] The principal witness, Saw Kiam Kiat, the plaintiff's father ('PW1') testified that he purchased the said lands in 1961 from Lin Yoke Ching. At the time of purchase of the said lands, the premises which are the subject matter of this suit were already in existence. PW1 believed that the said premises built on the said lands were constructed sometime in the 1950's. In 1966 he transferred the said lands to the plaintiff, his son, Saw Shiou Shyong. Be that as it may, he continued to administer the said lands after the said lands were transferred into the plaintiff's name pursuant to a power of attorney executed in his favour.

[19] He received rent of RM10 a month initially, which was subsequently increased to RM45.90 a month from the 43 defendants who were in occupation of the said premises.

[20] Tetuan Dato' SM Yong & Co, the plaintiff's solicitors issued notices to quit all dated 22 August 1974 (P6) to the original 43 defendants by which notice they were required to deliver vacant possession of the said lands on 30 September 1974, or on the expiration of the next complete month of the tenancy subsequent to receipt of the notice to quit. The notice to quit specified that should the defendants fail to do so, a claim would be filed without any further notice. They failed to vacate the said lands.

[21] SP1 testified that subsequent to the issuance of the notice to quit he did not receive any rental from the defendants neither had he entered into any agreement with any of them for them to transfer or sell any of the premises on the said lands to any other party.

The ten defendants represented by Tetuan Xavier Norhaslinda & Associates

[22] The protection claimed by these ten defendants under the Control of Rent Act was abandoned during the course of trial.

[23] Three witnesses were called to testify, Mohd Saleh bin Kos (an officer from DBKL ('DW2')) and two of the defendants represented by Tetuan Xavier Norhaslinda & Associates, ie Saraswathi Violet Sarma, (the 26th defendant (DW1)) and Yap Ah Kow @ Yap Biow Hwee (the 38th defendant (DW3)). Their testimony may be summarised as follows.

[24] Mohd Saleh bin Kos (DW2), testified that all of 43 premises built on the said lands were temporary buildings. Temporary occupation licences had been issued to the occupier of the 43 premises on the said lands from 1949 up to 15 April 1975. According to DW2 a temporary building licence would only be issued if there was no objection from the landlord. DBKL did not issue any temporary building licence after 15 April 1975.

[25] The 26th defendant, Saraswathi Violet Sarma, (DW1) testified that she is the owner of premise No 76B. Her father had purchased the said premises from the previous owner for her in 1950 for the sum of RM4,500. She is no longer residing in premise No 76B which has been rented. She now resides in Kepong. The rates and assessments were paid by her.

[26] She was in possession of a temporary building licence to retain a temporary building issued by DBKL for the period 16 April 1974 to 15 April 1975 when the notice to quit was served. The previous landlord had informed her that she could stay on this premise permanently, and if there was a reversion, it would be by mutual agreement which would include compensation as well as a reasonable time to relocate.

[27] Yap Ah Kow @ Yap Biow Hwee (the 38th defendant ('DW3')) at trial states that he resides at Taman Bukit Desa. He testified that he is the owner of premise No 80B. His father, Yap Chiew Lian, had purchased the said premise for him in 1950 from the previous landowner for RM4,500. A temporary building licence was issued by the Kuala Lumpur Municipality for permission to retain a temporary building from year to year. In August 1974, when the notice to quit was served, there was a temporary building licence issued for the period 16 April 1974 to 15 April 1975. He paid the rates to the Kuala Lumpur Municipality and assessments to DBKL in respect of this premise, the last being on 29 February 2000. When his father purchased this premise the expectation created by the previous landowner was that they could stay there for as long as mutually agreed.

The interveners/defendants

[28] The interveners' case rests on the testimony of three witnesses, ie Lai Sam Choon (the husband of Lee Geok Lan (the 11th intervener ('DW4')), Siew Boon Hong (the first intervener ('DW5')) and Ang Ee Sing (the third intervener ('DW6')) whose testimony are as follows:

[29] Lai Sam Choon (DW4), states that he resides in Taman Nirwana. He was occupying premise No 74E when the notice to quit was served in August 1994. His wife purchased premise No 74E in the 1970's. Cheques towards rental submitted to the plaintiff's solicitors, Messrs Dato' SM Yong subsequent to issuance of the notice to quit was returned.

[30] Siew Boon Hong @ Shandra, the first intervener ('DW5), testified that he is the owner and occupier of premise No 72. He moved into this premise in 1963. His father, Siew Heen Yuen @ Siew Swee Chaw (the first defendant is the original owner of premise No 72). DW5 states that he purchased house No 72 from his father on 11 July 1994 for RM25,000. He paid the said sum in six installments. He then spent RM20,000 improving this premise. In cross-examination DW5 conceded that he did not have any supporting evidence to support payment of the RM25,000 purchase price nor of the RM20,000 incurred in improving this premise. DW5 also testified that the assessment for premise No 72 was paid by him.

[31] Ang Ee Sing, the third intervener ('DW6) resides in premise No 80. He earlier owned premise No 72C but had swapped premise No 72C with the owner of premise No 80, Mah Moi @ Mah Yole Cheng, who is intervener No 21 in this case. Premise No 72C was occupied by Mah Moi. This premise has since been rented to others.

[32] DW6 testified that he moved in premise No 80 in the 1960's and is still staying there. He paid a purchase price of RM3,000 for this premise on 15 October 1973, spent RM20,000 in improving the house, and paid the quit rent. The plaintiff refused to accept rental from him as well as from the owners of the other premises on the said lands subsequent to issuance of the notice to quit.

THE JUDGE'S FINDINGS

[33] Based on the evidence summarised above, the High Court judge held that in the absence of any evidence of any attempt by the previous landowner to evict the defendants from the said lands, he considered it fair to assume that the said premises on the said lands had been built with the encouragement and approval of the previous landowner.

[34] The High Court judge then ruled that the defendants (which term would include the defendants/interveners) had acquired a tenancy coupled with equity. He then made a finding that the plaintiff was entitled to the possession of the said lands upon payment of compensation to be assessed by the registrar and directed the defendants to deliver vacant possession of the said lands within three months from the date of payment of compensation.

[35] The position as at the date of hearing of this appeal is that the defendants and interveners/defendants had yet to vacate the said lands.

[36] The issue for determination in this appeal whether the trial judge was right in finding that the ten defendants represented by Tetuan Xavier Norhaslinda & Associates and the 33 defendants represented by Syarikat Lek Yan who did not appear at trial, as well as the interveners/defendants were all entitled be paid compensation to be assessed.

THE SUBMISSIONS

[37] In argument before us the appellant's counsel stressed the fact that the factual position of each defendant and each intervener/defendant were different. There is nothing to support the factual position that the position of all of the defendants and interveners/defendants were identical. The evidence given by the 26th defendant (DW1) and 38th defendant (DW3) was on their own behalf and not on behalf of the other 41 defendants who had not testified. In this situation he submitted that in the absence of any evidence on behalf of these other 41 defendants the trial judge had erred in finding that these 41 defendants had acquired a tenancy coupled with equity. He stressed the fact that the 26th defendant was no longer staying on premise Lot 76B but is renting out the same. There cannot be a tenancy coupled with equity by reason of her non-occupation of that premise. In this situation the plaintiff is entitled to vacant possession in respect of the said premises as against all of them without conditions. The trial judge therefore erred in ordering the plaintiff to pay compensation to those defendants and the defendants/interveners who had not testified at trial.

[38] As for the 38th defendant who claimed to have an interest in premise No 80B, he too was no longer occupying this premise. As to the alleged purchase by the 38th defendant of premise No 80B from his father, he urged the court to note that this was not an arm's length transaction and was but a bare statement unsupported by any documentary evidence.

[39] There was no evidence that the 10 defendants represented by Tetuan Messrs Xavier Norhaslinda & Associates had expended money on the encouragement of the plaintiff. The ten defendants represented by Tetuan

Messrs Xavier Norhaslinda & Associates have accordingly failed to show that an equity had been created in their respective favour.

[40] Other than the plaintiff collecting rent on a monthly basis, prior to the issuance of the notice to quit, there was no evidence to show that any of the defendant had been encouraged by the plaintiff to purchase or renovate their premises in the expectation that they would be allowed to remain there. It was important to bear in mind that the defendants have not paid any ground rent to the plaintiff since the issuance of the notice to quit way back in 1974.

[41] As for the interveners/defendants, he highlighted the fact that DW4's, (the 11th intervener's husband) residential address at trial was 'No 55 Taman Nirwana'. By this it is to be inferred that DW4 and the 11th intervener too were no longer in occupation of premise No 74E.

[42] As to the first intervener's alleged purchase of premise No 72 on 11 July 1994 from his father, by reason of the fact that this alleged purchase took place 20 years after the plaintiff had issued the notice to quit to the defendants, there certainly cannot be an equity in the first intervener's favour when there was no action or permission or representation by the plaintiff or the plaintiff's predecessor, to the first intervener. Further, there is no proof of payment of the purchase price or the renovation made by the first intervener.

[43] As for the third intervener, he had in cross-examination admitted that he did not make any payment for the purchase price of RM3,000 for premise No 80. As to the alleged expenditure of RM20,000 to renovate this premise, again there is no supporting documentation that such an expenditure had in fact been incurred.

[44] The High Court judge had also failed to take into consideration the fact that the buildings on the said lands were of a temporary nature and that only a nominal ground rent of RM45.90 per month was levied. The licence issued for temporary building for only for a period of one year which licence was revocable upon giving due notice. It is common ground that no temporary occupation licence was issued by DBKL after 15 April 1975.

[45] The true position is that there is no tenancy coupled with equity but only a monthly tenancy terminable with one month's notice which tenancy had been validly terminated by the notices to quit. As to the payment of assessment by the tenant concerned, this was but an incident of the occupation of the respective premises imposed by and payable to the local authority.

[46] Even if one were to accept that the defendants and defendants/interveners had acquired an equity, the appellant's counsel submitted that that equity had been satisfied and the plaintiff was under no obligation to pay any compensation to the defendants and interveners/defendants as s 221(3) of the National Land Code provides that the maximum period for lease of part of a land is only 30 years. In *Siew Soon Wah & Ors v Yong Tong Hong* [1973] 1 MLJ 133 at p 135, the Privy Council recognised that the landlord in that case did not have the power to grant to the respondent a lease for more than 30 years. In this present case the said lands had been occupied since the early 1950's. The appellant issued the notices to quit in 1974, approximately 24 years later. Although the notices to quit was issued before the expiry of the 30 year period, the defendants or the defendants/interveners had continued to occupy the said lands (or was in control of it and rented it out) without paying any ground rent to the plaintiff. Since issuance of the notices to quit in 1974 until the date of decision in the High Court (ie 16 February 2001) the defendants have been allowed to occupy the said lands rental free. In other words the defendants have been in occupation of the said land for approximately 51 years.

[47] Notwithstanding the fact that there may have been a change of occupation between the previous occupiers and the present defendants and interveners/defendants, the equitable rights of the previous occupiers have been transmitted to them. Whatever equitable rights that were acquired by them from their respective predecessors (if any) would be for the balance of the 30 years. In this present case, the defendants or the defendants/interveners had occupied the said lands for at least 51 years, far exceeding the maximum period of tenancy for part of land under s 221(3) of the National Land Code. The defendants and the interveners/defendants cannot therefore be heard to state that they have suffered loss. Equity has been satisfied upon the expiration of the 30 years period. On this ground the defendants/interveners are not entitled to any compensation from the plaintiff.

[48] Encik Dennis Xavier on behalf of the ten defendants whom he represents submitted that the notices to quit were bad in law. The plaintiff must give reasonable notice and satisfy the equity by paying reasonable compensation to the defendants. On the facts of this case the defendants', (particularly the 10 defendants whom he represents) and the interveners, had a tenancy coupled with an equity (equitable estoppel) on the basis that they had purchased their respective premises, paid the assessment, rates and taxes, and by reason of the plaintiff having consented to the issuance of the licence to retain a temporary building.

A **[49]** Encik Prasad, the interveners' counsel submitted that the plaintiff was aware of the arrangements giving rise to the equity in favour of the interveners/defendants which had existed before the plaintiff became the registered owner. In furtherance of those arrangements, the plaintiff had induced the defendants and the interveners/defendants to pay an increased
B ground rent in the expectation that the plaintiff would not take the said lands back for development.

DECISION

C

[50] We are of the view that consideration must necessarily be taken of the issues raised in the pleadings and what transpired at trial. We propose to consider the plaintiff's claim separately in three parts, firstly, that as against the original 33 defendants who continued to be represented by Syarikat Lek
D Yan; secondly, that as against the ten defendants represented by Messrs Xavier Norhaslinda & Associates; and thirdly, that as against the interveners/defendants.

[51] As far as the 33 defendants represented by Syarikat Lek Yan are
E concerned, their case as the pleadings stood at trial was that the premises of which they are in occupation of were protected under the Control of Rent Act and nothing else. The defence makes no mention of any of them having acquired a tenancy coupled with an equity.

F

[52] It is trite law that parties are bound by their pleadings. A judgment should be based on the issues pleaded. The learned judge is not entitled to decide the suit on an issue which has not been raised in the defence. For the court to make a decision against a party by giving effect to an issue which
G these defendants had not raised in their pleadings under our adversary system of procedure has the effect of depriving the plaintiff of the benefit of one of the most fundamental right of natural justice, the right to be informed of any point that is going to be relied upon, and that he be given the opportunity of stating what his answer to that issue is.

H

[53] Further, as far as these 33 defendants are concerned, he who asserts must prove. It was incumbent upon these 33 defendants to prove that the premises of which they allege to have an interest in was constructed on or before 31 January 1948. There was no such evidence before the court as none
I of these 33 defendants appeared to give evidence. A perusal of the record however shows evidence to the contrary. According to DW4 all of the forty-three premises on the said lands had been constructed in 1949. The Rent Control Act is accordingly not applicable to the premises of which these 33 defendants were in occupation of.

[54] The trial judge had clearly in these circumstances erred in ordering the plaintiff to pay compensation to these 33 defendants on the basis of having acquired an equitable interest.

[55] Before we state our ruling on the issue whether the ten defendants represented by Mr Xavier, as well as the 23 interveners/defendants, had acquired a tenancy coupled with an equity, it is necessary to state several significant facts. This is not a representative action. The two defendants and the three interveners/defendants who testified at trial did so on their own behalf, not on behalf of any other defendants or the other interveners/defendants. There is nothing on record of any agreement that the evidence given by these witnesses were on behalf of any other defendants, or the interveners/defendants.

[56] The law relating to a tenancy coupled with an equity or equitable estoppel is founded on the statement of Lord Kingsdown in *Ramsden v Dyson* (1866) LR 1 HL 129 which had been applied and adopted in Malaysia (see *Devi v Francis* [1969] 2 MLJ 169; [1968] 1 LNS 34). The statement reads as follows:

> The rule of law applicable to the case appears to be this: If a man, under a verbal agreement with a landlord for a certain interest in land or, what amounts to the same thing, under an expectation, created or encouraged by the landlord, that he shall have a certain interest, takes possession of such land, with the consent of the landlord, and upon the faith of such promise or expectation, with the knowledge of the landlord, and without objection by him, lays out money upon the land, a court of equity will compel the landlord to give effect to such promise or expectation. This was the principle of the decision in *Gregory v Mighell* 18 Ves 328, and, as I conceive, is open to no doubt …
>
> If, on the other hand, a tenant being in possession of land, and knowing the nature and extent of his interest, lays out money upon it in the hope or expectation of an extended term or as allowance for expenditure, then, if such hope or expectation has not been created or encouraged by the landlord, the tenant has no claim which any court of law or equity can enforce. This was the principal of the decision in *Pillay v Armitage* 12 Ves 78, and like the decision in *Gregory v Mighell*, seems founded on plain rules of reason and justice.

[57] Tenancy with equity or equitable estoppel thus only arises if there is evidence that the plaintiff had required any of the defendants or interveners/defendants or allowed them to expend money on the said lands under an expectation created or encouraged by him that they would be able to remain there. In such a situation the landowner is prevented from taking any action contrary to that expectation. In the event that a tenancy coupled with equity is established, the landowner must first satisfy that equity before he can recover the land.

[58] What is the evidence before the court? There is no evidence of the defendants nor the interveners/defendants having expended money on the inducement or encouragement of the plaintiff. The dealings if any, were all with the previous landowner, not the plaintiff. Of the two defendants who testified, defendant No 26 (DW1) no longer lives in premises No 76B. Likewise defendant No 38 (DW3) also does not live in premise No 80B. In fact these two defendants had admitted to renting out their respective premises and enjoying rental as contrasted with the position of the plaintiff, who received no rental subsequent to the issuance of the notice to quit. As for the evidence given by the interveners/defendants, there is also no evidence of them being induced or encouraged by the plaintiff. In fact, in respect of premise No 72, the first intervener knew that the plaintiff had commenced proceedings to recover possession.

[59] The established fact is that the buildings were temporary buildings. The temporary building licences were issued on the application by the house owners. The defendants and interveners/defendants knew its validity is for a period of one year only. In any event the temporary building licence was revocable. It was issued subject to the condition 'This permit is issued subject to the landowner's consent to the continued occupation of the land'. In the present case the plaintiff had given the required one month's notice.

[60] the plaintiff had made it clear in his letter to all owners of the premises in exh P3 dated 27 May 1966 that 'Your building was built around 1950 under certain agreements and the period for the building to remain has expired long ago'. When the notices to quit were issued, it meant that the consent had been withdrawn. We agree with the appellant's counsel's submission that the payment of rates and assessment were but an incident of the occupation of the premises imposed by and payable to the local authority.

[61] We are also in agreement with the submission of the appellant's counsel that by reason the occupiers having occupied the said premises since 1950, the equity claimed has been satisfied by reason of this long occupation. The rents paid to the plaintiff was a paltry sum of RM49.50, with some enjoying rents from these premises and living elsewhere. In our view it would be unjust and inequitable for these defendants to be paid any compensation. If there is any equity it should be invoked in favour of the plaintiff.

[62] To conclude, the appeal is allowed with costs. The High Court judge's decision that vacant possession of the said lands be given to the plaintiff is affirmed. The order directing the plaintiff to pay compensation to be assessed against the defendants and the defendants/interveners is set aside. We further

made an order directing them to vacate the said lands on or before 31 December 2008. The deposit to the appellant to account of taxed costs.

Appeal allowed with costs.

Reported by K Nesan